

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

HURON MOUNTAIN CLUB

Plaintiff,

v.

UNITED STATES ARMY CORPS OF  
ENGINEERS, et al.,

Defendants.

Case No. 2:12-CV-00197-RHB

In accordance with 28 U.S.C. § 1746, I, John Konik, do hereby declare and state:

1. I am the Chief of the Regulatory Office, U.S. Army Corps of Engineers, (“Corps”), Detroit District. I have a Bachelor of Science degree in Biology, with a Masters of Arts degree in Zoology, and have been employed by the Corps since 1980. During that time I have worked as a senior biologist, as Chief of Permit Evaluation Branch “A”, and have been in my present capacity as the Chief of the Regulatory Office for the Detroit District since 2004.

2. The responsibilities of the Detroit District Regulatory Office include the processing of permit applications submitted under both Section 10 of the Rivers and Harbors Act of 1899 (RHA) and Section 404 of the Clean Water Act (CWA). To the extent that our resources allow, we also investigate unauthorized activities and possible violation of permit terms and conditions under these statutes within the District’s regulatory jurisdictional boundaries, which includes the state of Michigan, except where that responsibility has been legally assumed by another entity. As outlined below, the State of Michigan has assumed responsibility for implementing the CWA Section 404 program for some of the waters of Michigan.

#### RHA Section 10 Jurisdiction

3. In the Detroit District the most frequently exercised authority, historically, has been Section 10 of the RHA of 1899 (33 U.S.C. § 403) which regulates construction, excavation, or deposition of materials in, over, or under navigable waters, or any work that would affect the course, location, condition, or capacity of such waters. This authority has been granted to the Secretary of the Army, acting through the Chief of Engineers for the U.S. Army Corps of Engineers, since enactment of the RHA in 1899.

4. The geographic jurisdiction of the RHA is governed by statute but generally includes all navigable waters of the United States, which are defined as, “those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce.” (33 C.F.R. Part 329). Activities requiring Section 10 permits include structures (e.g., piers, wharves, breakwaters, revetments, groins, bulkheads, jetties, weirs, transmission lines) and work such as dredging or disposal of dredged material, or excavation, filling, or other modifications to the navigable waters of the United States.

#### CWA Section 404 Jurisdiction

5. In 1972, amendments to the Federal Water Pollution Control Act added what is commonly called the CWA Section 404 authority (33 U.S.C. § 1344) to the Corps’ regulatory program. Under Section 404, the Secretary of the Army, acting through the Chief of Engineers, is authorized to issue permits, after notice and opportunity for public hearings, for the discharge of dredged or fill materials into the waters of the United States at specified disposal sites. Selection of such sites must be in accordance with guidelines developed by the Environmental

Protection Agency (EPA) in conjunction with the Secretary of the Army. These guidelines are known as the Section 404(b)(1) Guidelines. The Federal Water Pollution Control Act was further amended in 1977 and given the common name “Clean Water Act” and was again amended in 1987 to modify criminal and civil penalty provisions and to add an administrative penalty provision.

6. The geographic jurisdiction of the CWA also uses the term “navigable waters,” but that term is defined in the CWA as “the waters of the United States, including the territorial seas.” Thus, Section 404 jurisdiction encompasses Section 10 waters plus other waters of the United States, such as the tributaries of the navigable waters and wetlands adjacent to those tributaries. Activities requiring Section 404 permits are limited to those activities that involve discharges of dredged or fill material into the waters of the United States. These discharges include return water from dredged material disposed of on upland and generally any fill material (e.g., rock, sand, dirt) used to construct fast land for site development, roadways, erosion protection, etc.

#### Assumption of Section 404 Jurisdiction by the State of Michigan

7. In late 1983, the EPA, in accord with Section 404(g) and (h) of the Clean Water Act, approved the State of Michigan’s assumption of the Section 404 program regulating discharges of dredged or fill material into certain waters of the United States in Michigan. This state assumption of regulated activities under the Clean Water Act is memorialized in the “Memorandum of Agreement Between the State of Michigan Department of Natural Resources and the United States Environmental Protection Agency” attached to this declaration as Appendix 1 (Michigan-EPA Agreement). Although the Michigan entity originally named in the

Memorandum of Agreement was the Department of Natural Resources (DNR), the State's responsibilities under the Agreement now reside with the Michigan Department of Environmental Quality (MDEQ).

8. As part of EPA's agreement with the State of Michigan, and as specifically provided for in 33 U.S.C. § 404(j), EPA retained the right to review and comment on proposed projects within the State's assumed Section 404 authority that would result in a "major discharge" as that term is defined in the 1983 Memorandum of Agreement. See, Appendix 1, page 3, Section 4 & 5. Under these provisions the EPA will seek comment from the Corps (and the U.S. Fish & Wildlife Service), but Corps involvement is limited to comments, if any, that are provided to the EPA.

9. In April 1984, in accord with the requirements of 40 C.F.R. § 233 and the State's assumption of Section 404 responsibilities, the Corps entered into an agreement with the State of Michigan concerning enforcement of Section 404 and the waters to be regulated by the respective parties (Michigan-Corps Agreement). As stated in that agreement:

[A]ll waters within the State of Michigan shall be regulated by DNR as part of this program OTHER THAN those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including wetlands adjacent thereto. These waters are specifically identified in ATTACHMENT A – 'Navigable Waters of the United States in U.S. Army Engineer District, Detroit, November 1981,' attached to this Memorandum of Agreement, which will be regulated by DNR and COE under applicable state and Federal statutes.

Memorandum of Agreement, April 2, 1984, Article III, A; emphasis in original; attached as Appendix 2.

10. In 1972, in compliance with Federal Regulations, the Corps conducted studies of each and every river and stream in the State of Michigan to determine its navigability. These studies looked at the each water's historical, present and potential use for interstate or foreign commerce. "ATTACHMENT A", as cited above in the Michigan-Corps Agreement, was the result of those studies and listed those waters found to be navigable.

11. Under the State assumption of the Section 404 program and the agreements between EPA, the Corps, and the State of Michigan, those waters listed in "ATTACHMENT A" to the 1984 agreement remain within the Corps' regulatory program under Section 404 and/or Section 10. With the exception noted at paragraph 12 below, those waters *not* listed in "ATTACHMENT A" to the 1984 agreement are under the auspices of the State of Michigan for purposes of implementation and application of section 404 of the CWA pursuant to the terms of the Michigan-EPA and Michigan-Corps Agreements. The Salmon Trout River in Marquette County, Michigan, which is at issue in this case, is not listed in "ATTACHMENT A" to the 1984 agreement.

12. Waters not listed in "ATTACHMENT A" to the 1984 Michigan-Corps Agreement, but that are inundated by the ordinary high waters of navigable waters, remain under the Corps' regulatory program. By way of example, the Salmon Trout River in Marquette County is regulated by the Corps up to the limit of where the Salmon Trout River is inundated by the ordinary high waters of Lake Superior, an RHA Section 10 navigable water. Presently, this ordinary high water mark (OHWM) is approximately two (2) river miles upstream from Lake Superior. Above this OHWM the Salmon Trout River remains under the authority of the Michigan Department of Environmental Quality (MDEQ, formerly part of MDNR).

13. Attached as Appendix 3 is the most recent listing of those navigable waters of the United States that are within the regulatory jurisdiction of the Detroit District of the U.S. Army Corps of Engineers. The waters listed were examined in the manner as previously stated in paragraph 10 and the list is updated, as necessary, and published on the Detroit District's website as an aid to the general public. Appendix 3, Page 12, contains the listing for the Salmon Trout River, Marquette County, Michigan and notes that the limit of the Corps' jurisdiction (in accord with the State assumption of 404) ending at the confluence of the river with Sullivan Creek, approximately two miles from Lake Superior.

Proposed Kennecott Eagle Minerals Project

14. In September of 2005, the Detroit District of the Corps first became aware of the proposed Kennecott Eagle Minerals mine when it was approached by the EPA to participate in a conference call to discuss the project and tribal trust responsibilities over the project. The proposed project and associated construction activity was noted to be located adjacent to the Salmon Trout River, Marquette County, Michigan, approximately twenty-three (23) river miles upstream from Lake Superior. As the Corps explained during the course of this teleconference (which included various federal agencies as well as the Keweenaw Bay Indian Community), because the project was located approximately 21 miles upstream from the navigable portion of the Salmon Trout River, and because the Salmon Trout River was not otherwise a water body for which the Corps retained jurisdiction under ATTACHMENT A to the Michigan-Corps Agreement, the proposed project was within the State of Michigan's assumed authority with regard to CWA Section 404 permitting and that there was no basis for Corps Section 10 authority at the proposed project location.

15. Since that September 2005 teleconference the Corps has not had any substantive input or involvement with the proposed mining operation outside of providing comments, in accord with the EPA-MDNR (MDEQ) agreement, regarding a proposed roadway near the mining project that would have impacts on wetlands falling under the State's assumed Section 404 authority. Further, the Corps is not aware of any action on the part of the EPA to exercise its Section 404 oversight and remove this mining project from the State's review.

16. It remains the position of the Corps of Engineers that the Salmon Trout River, Marquette County, Michigan, adjacent to the proposed Kennecott Eagle Minerals project, some twenty-one (21) river miles upstream from the OHWM of Lake Superior, does not fall within the Corps' Section 10 jurisdiction.

17. Further, under the State assumption of Section 404, the Corps has no Section 404 jurisdiction over the Salmon Trout River, Marquette County, Michigan, adjacent to the proposed Kennecott Eagle Minerals project.

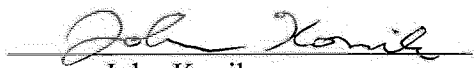
18. The Corps recognizes that "navigability," as that term is legally defined, is ultimately dependent upon judicial interpretation. See, 33 C.F.R. 329.3. Therefore, should a federal court determine that the Salmon Trout River, Marquette County, Michigan is navigable adjacent to the proposed mining project, and jurisdiction is vested in the Corps, the Detroit District would have to determine if the proposed activities of the project are subject to regulation. Though it is extremely difficult to make an accurate determination of costs without having any details of the proposed project, I estimate that it would cost "in the ballpark" of \$175,000, at a minimum, to review and process a Department of the Army permit application for this project to its final decision.

Renewal of the State Assumption of Section 404

19. In November 2011 the EPA and MDEQ entered into a new agreement for the State of Michigan's administration of Section 404 of the Clean Water Act. This agreement did not make any substantive changes in the manner in which the Corps and the State have administered their respective responsibilities over Section 404 since 1983. The November 2011 EPA-MDEQ Memorandum of Agreement is attached as Appendix 4.

Under the provisions of 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct.

Executed on: *25 May 2012*

  
John Konik  
Chief, Regulatory Office  
U.S. Army Corps of Engineers  
Detroit District



# Appendix 1

MEMORANDUM OF AGREEMENT

Between the

State of Michigan

Department of Natural Resources

and the

United States Environmental Protection Agency

This Memorandum of Agreement between the State of Michigan Department of Natural Resources, hereinafter referred to as the MDNR, and the United States Environmental Protection Agency, hereinafter referred to as the USEPA, is entered into to enable the State to carry out the policies, regulations and procedures necessary to administer the permit program established pursuant to Section 404 of the Clean Water Act (CWA), 33 U.S.C. 1251, et. seq., and hereinafter referred to as the "404 program".

WHEREAS, Section 404(g) provides for State administration of the 404 program regulating discharges of dredged or fill material into certain navigable waters; and

WHEREAS, the MDNR has proposed a State program fully in accordance with the requirements of Section 404(g) and 40 CFR Part 233; and

WHEREAS, the USEPA has approved the state program pursuant to Section 404(h),

NOW, THEREFORE, IT IS AGREED THAT:

- (1) The MDNR shall administer and enforce the 404 program in accordance with the State Section 404 Program Assumption Regulations (40 CFR Part 233), the 404(b)(1) Guidelines (40 CFR Part 230), and provisions contained in memoranda and agreements between the USEPA and MDNR.

- (2) The State will take timely and appropriate enforcement action against persons in violation of permit conditions for all permits issued under the State 404 program, and against persons conducting unauthorized discharges of dredged or fill material into waters of the United States over which the MDNR has assumed jurisdiction under the State 404 program. In instances where the USEPA determines that the MDNR has not initiated timely and appropriate enforcement action against a State 404 program permit violation or an unauthorized discharge, USEPA shall proceed with any or all of the enforcement options available under Section 309 of the CWA. Prior to proceeding with Federal enforcement action against a State 404 program permit violator or an unauthorized discharger, and for purposes of providing notice only, USEPA shall inform the MDNR that Federal enforcement action is to be initiated forthwith. This notification shall be in the form of a telephone or written communication, by USEPA to the Director of MDNR or his designee, and, except in the exercise by USEPA of its emergency power under Section 504 of the CWA, such notification shall be provided in all cases of Federal enforcement action regardless of the existence or extent of previous communication between USEPA and the MDNR on the matter. It is expected that preliminary staff discussions will take place between USEPA and MDNR representatives before institution of Federal enforcement action.
- (3) The USEPA, U.S. Fish and Wildlife Service (FWS), and the Corps of Engineers (Corps) shall, pursuant to Section 404(j) of the CWA,

review each permit application received by MDNR except for those categories of discharges for which such review has been waived in accordance with Section 404(k) of the CWA. The primary purpose of such review shall be to monitor and evaluate MDNR's administration of the State 404 program. It is fully expected that the categories of discharges for which the requirements of Section 404(j) are waived will expand as MDNR demonstrates proficiency in the administration of the 404 program.

- (4) The USEPA, after consultation with the Corps and the FWS, shall waive the requirements of Section 404(j) for all but the following classes or categories of discharges:
- (a) Discharges of dredged or fill material proposed to be authorized by general permit.
  - (b) Major discharges of dredged or fill material as defined in this agreement.
  - (c) Discharges of dredged or fill material into critical areas established under state or federal law, including fish and wildlife sanctuaries or refuges; national and historical monuments; wilderness areas and preserves; national and state parks; components of the National Wild and Scenic Rivers system; the designated critical habitat of threatened or endangered species; sites identified or proposed under the National Historic Preservation Act; and sites identified by USEPA in advance under provisions of the 404(b)(1) Guidelines.

(d) Discharges of dredged or fill material which may affect the waters of a state other than Michigan.

(5) "Major discharges of dredged or fill material" are herein defined as:

(a) Discharges known or suspected to contain toxic pollutants as identified by Section 307(a)(1) of the CWA, hazardous substances identified pursuant to Section 311 of the CWA and Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et. seq., toxic substances as defined by Section 3 of the Toxic Substances Control Act, 15 U.S.C. 2601, et. seq., and hazardous waste as defined by Section 1004(5) of the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et. seq.

(b) Discharges into areas identified by USEPA, in consultation with the Corps and FWS, which could have the following impacts:

- i. Significant adverse effects on areas of waters which are unique for a particular geographic region.
- ii. Significantly reduce the commercial or recreational values of a significant area of waters of the United States.
- iii. Affect a federally-listed or proposed endangered or threatened species.

(c) Wetland fills involving more than 10,000 cubic yards of material.

(d) New construction of breakwaters or seawalls that exceed 1,000 feet in total length.

- (e) Culvert enclosure of more than 100 feet with more than 200 cubic yards of fill in waters regulated by MDNR or channelization of more than 500 feet of a river or stream.
- (6) The USEPA retains the right to terminate, at any time, in whole or in part, any waiver of the requirements of Section 404(j) by sending written notice of termination to the MDNR.
- (7) The MDNR shall promptly submit the classes or categories of permit applications identified in section 4 of this agreement to the Regional Administrator of the USEPA for review, coordination and, where applicable, objection in accordance with Section 404(j). The submission shall include:
  - a) A copy of all complete permit applications for those activities identified in section 4(b-d) of this agreement. Where Michigan law requires preparation of an environmental impact statement (EIS), or similar documents and such EIS or other document is available, the EIS or other document shall accompany the permit application when transmitted to the Regional Administrator;
  - b) Notice of every significant action taken by the MDNR related to the consideration of any permit application for which the requirements of Section 404(j) have not been waived;
  - c) A copy of each draft general permit. A draft general permit will be prepared by MDNR whenever MDNR intends to issue a general permit;
  - d) A copy of every final application action including a copy of every

permit issued, modified or denied, along with any and all conditions and requirements.

- (8) The MDNR shall comply with the draft permit requirements of the appropriate sections of 40 CFR Part 233 for those discharges listed under section 4 of this agreement which require draft permits. For discharges which require a draft permit, public and USEPA review shall be based on the draft permit. For those discharges listed in section 4 of this agreement which do not require a draft permit, public and USEPA review shall be based on the permit application and other documentation outlined in section 7(a) of this agreement.
- (9) The Regional Administrator of the USEPA shall, not later than 30 days from the date of receipt of a permit application from MDNR, notify MDNR of his intent to provide written comments on the application. If the Regional Administrator intends to provide written comments, he shall review, coordinate with the Corps of Engineers and U.S. Fish and Wildlife Service, and submit comments to MDNR in accordance with the requirements of and in the time frames specified in Section 404(j). The MDNR shall respond to any such comments received from USEPA in the manner specified in Section 404(j) and appropriate sections of 40 CFR Part 233.
- (10) The MDNR shall submit quarterly noncompliance reports for Section 404 discharges containing the following information:
- (a) Name, location and permit number of each noncomplying permit or the name, location and circumstances of each unauthorized discharge;

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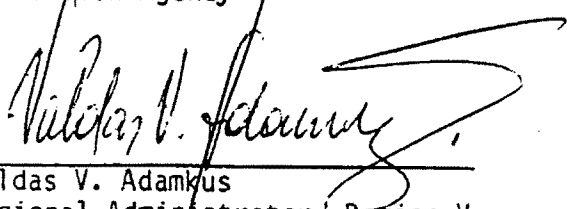
- (b) A brief description and date of each instance of noncompliance which will include the following:
  - (i) any unauthorized discharges of dredged or fill material subject to Michigan's jurisdiction or any noncompliance with permit conditions, and
  - (ii) a description of investigations conducted and of any enforcement actions taken or contemplated.
- (11) The MDNR shall submit to the Regional Administrator of the USEPA an annual report assessing the cumulative impacts of Michigan's permit program on the integrity of the state regulated waters. This report shall include:
  - (a) The number and nature of individual and general permits issued, reissued, modified, revoked and denied by the MDNR during the year;
  - (b) The number of acres of each of the categories of state regulated waters (lakes, streams, wetlands) which were filled or received any discharges of dredged or fill material during the year (by either authorized or known unauthorized activities) in excess of one surface acre per project;
  - (c) The number and nature of permits issued under emergency conditions as provided in appropriate sections of 40 CFR Part 233; and
  - (d) An approximation of the number of persons in the state discharging dredged or fill material under general permits, and an estimate of the cumulative impacts of these activities.



- (12) On the last working day of May, August, November, and February, the MDNR shall submit to the Regional Administrator of the USEPA information concerning noncompliance with state 404 permit requirements for all discharges subject to the State 404 program. The period for the annual report shall be for the calendar year ending December 31, with the report completed and available to the public no more than 60 days later.
- (13) The USEPA may, in accordance with Section 404(i), conduct periodic evaluations of Michigan's permit program.
- (14) This agreement does not limit, diminish or constitute an expressed or implied waiver of the authority of the USEPA to prohibit certain discharges pursuant to Section 404(c).
- (15) This agreement shall be reviewed jointly at least annually by MDNR and USEPA during the preparation of the annual State Water Pollution Control Program Plan, as required by Section 106 of the Clean Water Act.
- (16) Amendments to the memorandum of agreement shall be in writing. They may be proposed by either party, following the procedures required for the original agreement, and shall be effective upon the signature of both parties.

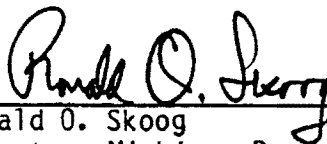
(17) This memorandum of agreement shall become effective upon approval by the Administrator of the USEPA.

United States Environmental  
Protection Agency

  
Valdas V. Adamkus  
Regional Administrator, Region V

Date December 9<sup>th</sup>, 1983.

Michigan Department of  
Natural Resources

  
Ronald O. Skoog  
Director, Michigan Department  
of Natural Resources

Date 30 Mar 83



# Appendix 2

MEMORANDUM OF AGREEMENT  
BETWEEN  
THE STATE OF MICHIGAN  
AND  
THE DEPARTMENT OF THE ARMY

I. PURPOSE AND AUTHORITY

- A. Section 404(g)-(1), Clean Water Act (CWA) (Public Law 92-500, Public Law 95-217; 33 USC 1344(g)-(1)), authorizes the Administrator, Environmental Protection Agency to approve a state administered program for the discharge of dredged or fill material into certain waters of the state. The Environmental Protection Agency has promulgated regulations, 40 CFR 233 (1980), describing the specific requirements for transferring a portion of the Section 404 discharge of dredged or fill material permit program from the Corps of Engineers to the state.
- B. The State of Michigan is submitting its state administered program for the discharge of dredged or fill material in compliance with the above cited authorities. This Memorandum of Agreement between the State of Michigan and the Department of the Army Corps of Engineers fulfills the requirements of 40 CFR 233 (1980).
- C. Section 404 of the Clean Water Act authorizes the Secretary of the Army, acting through the Chief of Engineers, to regulate the discharge of dredged or fill material into the waters of the United States. The North Central Division, U.S. Army Corps of Engineers encompasses the State of Michigan in the administration of the Section 404 program.

The Division Engineer, North Central Division, U.S. Army Corps of Engineers, has been delegated the authority to enter into a Memorandum of Agreement with a state assuming administration of the Section 404 program pursuant to Section 404(g)-(e) of the Clean Water Act.

II. DEFINITIONS

- A. State of Michigan means the Michigan Department of Natural Resources, hereinafter referred to as DNR.
- B. Department of the Army means the Corps of Engineers, hereinafter referred to as the COE.
- C. United States Environmental Protection Agency will hereinafter be referred to as EPA.
- D. Regional permits means those regionally issued COE general permits applicable within the State of Michigan.
- E. Nationwide permits means those permits issued by the Chief of Engineers.

### III. STATE WATERS TO BE REGULATED

- A. Consistent with the provisions of Section 404(g) CWA, all waters within the State of Michigan shall be regulated by DNR as part of this program OTHER THAN those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including wetlands adjacent thereto. These waters are specifically identified in ATTACHMENT A - "Navigable Waters of the United States in U.S. Army Engineer District, Detroit, November 1981", attached to this Memorandum of Agreement, which will be regulated by DNR and COE under applicable state and Federal statutes.

### IV. JOINT PERMIT PROCESSING

- A. When a proposed activity is located in a navigable water of the U.S. and requires both a state permit and permit under the Rivers and Harbors Act of 1899 (Section 10) from the COE, joint processing procedures shall be consistent with those established in the July 28, 1977 Memorandum of Understanding between the Detroit District, COE and the DNR.

### V. GENERAL PERMITS

- A. General permits consist of two categories of permits: (1) regional permits issued by the Detroit District, COE, and (2) nationwide permits issued by the Chief of Engineers, COE.
- B. The COE has issued Section 404 regional and nationwide permits within the state for activities regulated by the COE in waters of the state. These general permits remain in force in all waters of the U.S. except in state regulated waters. During the EPA approved state 404 program, the Detroit District, COE, shall suspend the issuance of permits to applicants in other than the navigable waters of the U.S. in Michigan specified in paragraph III. Activities authorized prior to DNR program assumption will remain valid until they expire.

### VI. CORPS OF ENGINEERS EMERGENCY OPERATIONS

The COE emergency response and recovery activities under Public Law 84-99 as a result of a natural disaster will, as always, be closely coordinated with the State of Michigan.

### VII. CORPS OF ENGINEERS WATER RESOURCE PROJECTS

- A. Detroit District, COE, proposed projects involving the discharge of dredged or fill material into waters of the United States must be developed in accordance with guidelines promulgated under the authority of Section 404(b)(1) of the Clean Water Act, as amended, unless exempted by Section 404(f). For such projects in a water to be regulated by DNR, other than projects specifically authorized by Congress for which the Detroit District, COE, has applied or will apply the Section 404(r) procedures, the Detroit District, COE, will provide the following to DNR:

1. Completed permit application form and plans.

2. An Environmental Assessment or Draft or Final Environmental Impact Statement, which contains the most accurate and complete water quality and related information practicable to allow application of Section 404(b)(1) Guidelines by the DNR.

B. Additional information may be requested if necessary for application of Section 404(b)(1) Guidelines.

C. Detroit District, COE, proposed projects which are determined by the District Engineer to be emergencies, based on the necessity for prompt action to prevent or reduce risks to life, health, or property, or severe economic losses will always be coordinated with the State of Michigan for necessary authorizations.

#### VIII. RECORDS TRANSFER

Upon notification of DNR program approval from the Administrator, EPA, the Detroit District, COE, shall promptly initiate the orderly transfer, to DNR, of pending permit applications with associated documents for activities and records of unexpired issued permits subject to the approved state program. Details for the orderly transfer will be mutually agreed to by DNR and Detroit District, COE.

#### IX. PROTECTION OF NAVIGATION OR ANCHORAGE

If the Detroit District, COE, determines and provides written documentation to the DNR, after consultation with the Secretary of the Department in which the Coast Guard is operating (or his designee), that a proposed activity would substantially impair anchorage or navigation, the DNR shall: (1) deny the 404 permit; or (2) the DNR shall notify the EPA that the DNR does not concur and does not intend to deny the project proposal under the 404 program.

#### X. REVIEW OF PROPOSED STATE PERMITS

A. The Detroit District, COE, waives the right to review DNR permits, except:

1. Major discharges or discharges into areas which could impact existing or proposed Detroit District, COE projects.

2. Discharges that may affect navigation in navigable waters of the U.S.

B. The Detroit District, COE, may modify the waived permit categories upon written notification to Region V, EPA of the requested changes and concurrence by Region V, EPA and DNR.

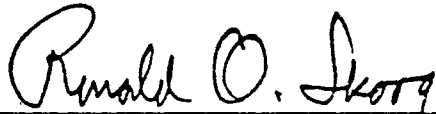
XI. ENFORCEMENT

The COE shall transfer enforcement responsibility for all individual, nationwide, and regional permits for 404 activities in state regulated waters as issued to applicants at the time of DNR program assumption.

XII. EFFECTIVE DATE AND REVISIONS

- A. This MOA shall become effective upon approval of the DNR 404 assumption program by the Administrator, EPA, and subsequent notification from the DNR that it is administering the program.
- B. This MOA and procedures established in conformance with it, shall be reviewed periodically, or at least once every twelve months, by DNR and the Detroit District, COE. Mutually agreed-upon revisions shall become effective upon signed amendments to the MOA. Either DNR or the COE, may initiate revisions when necessary.
- C. This MOA shall be suspended in the event the Administrator, EPA, withdraws approval of the state program pursuant to Section 404(1) CWA, or in the event that DNR notifies the COE and Region V, EPA 60 days in advance of the state's intent to terminate its program.

STATE OF MICHIGAN:



RONALD O. SKOOG, Director  
Department of Natural Resources



Date

DEPARTMENT OF THE ARMY:



JEROME B. HILMES  
Brigadier General, USA  
Commander, North Central Division



Date



NAVIGABLE WATERS OF THE UNITED STATES IN U.S. ARMY ENGINEER DISTRICT, DETROIT

NOVEMBER 1981

In administration of the laws enacted by Congress for the protection and preservation of the navigable waters of the United States, this Department exercises jurisdiction over the waterways listed below, from their mouths to the heads of navigation as follows:

<u>NAME OF WATERWAY</u>	<u>HEAD OF NAVIGATION</u>
AU GRES RIVER, Michigan	U.S. 23 Bridge at Au Gres, 2.8 miles above mouth
AU SABLE RIVER, Michigan	Foot Dam, 7 miles above mouth
BAD RIVER, Michigan	Upper City Limits of St. Charles
BELLE RIVER, Michigan	2800 Ft. above northern limits of Marine City
BETSIE LAKE, Michigan	Navigable throughout
BETSIE RIVER, Michigan	Head of Betsie Lake at Frankfort, 1.3 miles above mouth
BLACK RIVER, Michigan (St. Clair County)	Beach Road 7 miles above mouth
BLACK RIVER, Michigan (Ottawa County)	Head of Black Lake (Lake Macatawa) at Holland, 5.75 Miles from Lake Michigan
BLACK RIVER, Michigan (Van Buren County)	Michigan Central R.R. Bridge at South Haven, 2.5 Miles above mouth
BLACK RIVER, Michigan (Gogebic County)	Navigable 950 feet upstream from mouth
BURT LAKE, Michigan	Navigable throughout
CARP RIVER (LEELANAU RIVER), Michigan	Dam at Leland, 400 feet above mouth
CEDAR RIVER, Michigan	0.3 miles above mouth
CHARLOTTE RIVER, Michigan	Country road bridge 1/3 mile above mouth
CHEBOYGAN RIVER, Michigan	Navigable throughout
CLINTON RIVER, Michigan	Gratiot Ave. Hwy. Bridge, Mt. Clemens
CROOKED LAKE, Michigan	Navigable throughout
CROOKED RIVER, Michigan	Navigable throughout
DETROIT RIVER, Michigan	Navigable throughout
ECORSE RIVER, Michigan	Jefferson Ave. - Biddle St. Bridge, 400 feet above mouth
GALIEN RIVER, Michigan	Whittaker St. Bridge at New Buffalo, 0.25 mile above mouth
GRAND CALUMET RIVER, Indiana	Navigable throughout
GRAND RIVER, Michigan	Fulton St. Bridge at Grand Rapids, 40 miles above mouth
HURON RIVER, Michigan	U.S. 24 Bridge at Flat Rock
INDIAN RIVER, Michigan	Navigable throughout
INDIANA HARBOR CANAL, Indiana	
MAIN STEM	Navigable throughout
CALUMET RIVER BRANCH	Navigable throughout
LAKE GEORGE BRANCH	From the Main Stem to White Oak Avenue in East Chicago
IROQUOIS RIVER, Indiana	Navigable throughout
KALAMAZOO LAKE, Michigan	Navigable throughout
KALAMAZOO RIVER, Michigan	Dam at Allegan, 31.5 miles above mouth
KANKAKEE RIVER, Indiana	Navigable throughout
KAWKALIN RIVER, Michigan	Michigan Central R.R. Bridge at Kawkalin, Approximately 4 miles above mouth
KEWEENAW WATERWAY, Michigan	Navigable throughout, including Portage Lake, Torch Lake and Torch Canal
LAC LA BELLE, Michigan	Navigable throughout, including canal to Lake Superior

NAME OF WATERWAYHEAD OF NAVIGATION

LAKE CHARLEVOIX, Michigan	Navigable throughout
LAKE ERIE, Michigan	Navigable throughout
LAKE HURON, Michigan	Navigable throughout
LAKE MACATAWA, Michigan	Navigable throughout
LAKE MICHIGAN, Michigan	Navigable throughout
LAKE ST. CLAIR, Michigan	Navigable throughout
LAKE SUPERIOR, Michigan	Navigable throughout
LA PLAISANCE CREEK, Michigan	La Plaisance Road Bridge
LEELANAU RIVER (CARP RIVER), Michigan	Dam at Leland, 400 feet above mouth
LITTLE CALUMET RIVER, Indiana	Navigable throughout
LITTLE LAKE, Michigan	Navigable throughout
MANISTEE LAKE, Michigan	Navigable throughout
MANISTEE RIVER, Michigan	Including Manistee Lake, 5.6 miles from Lake Michigan
MANISTIQUE RIVER, Michigan	Upper end of lumber slips at Manistique, 3/4 mile above mouth
MAUMEE RIVER, Indiana	Hosey Dam at Fort Wayne
MENOMINEE RIVER, Michigan	From its mouth upstream 1.86 miles to but not including the Interstate Highway Bridge (U.S. 41)
MONA LAKE, Michigan	Navigable throughout
MULLET LAKE, Michigan	Navigable throughout
MUSKEGON LAKE, Michigan	Navigable throughout
MUSKEGON RIVER, Michigan	M-37 Highway Bridge, 39-1/4 mile above mouth (33 Miles from head of Muskegon lake)
NORTH BAR LAKE, Michigan	Navigable throughout including connection to Lake Mich.
ONTONAGON RIVER, Michigan	Milwaukee Railroad Bridge 0.76 mile above mouth
OTTAWA RIVER, Michigan	Detroit & Toledo Shore Line Bridge about 3 miles up-stream
PAW PAW RIVER, Michigan	Paw Paw Avenue, Benton Harbor, 2 miles above mouth
PENTWATER LAKE, Michigan	Navigable throughout
PENTWATER RIVER, Michigan	Head of Lake, 2-1/4 miles from lake Michigan
PERE MARQUETTE LAKE, Michigan	Navigable throughout
PERE MARQUETTE RIVER, Michigan	Head of Pere Marquette Lake 3 miles from Lake Michigan
PIGEON RIVER, Michigan	Upper Village limits of Caseville
PINE RIVER (Arenac County)	M-25 Bridge, 1/2 mile above mouth
PINE RIVER (St. Clair Co.)	Detroit Port Huron R.R. Bridge - 3 miles above mouth
PINE RIVER (Charlevoix Co.)	Upper end of both arms, Charlevoix Lake, Michigan 15 miles above mouth
PINNEBOG RIVER, Michigan	Junction with creek, 1/2 mile above mouth
PORTAGE LAKE, Michigan	Navigable throughout
RAISIN RIVER, Michigan	M.C. R.R. Bridge at Monroe - 2 1/2 mile above mouth
ROUGE RIVER, Michigan	M.C. R.R. Bridge at Dearborn (Junction Bridge)
SAGINAW RIVER, Michigan	Navigable throughout
ST. CLAIR RIVER, Michigan	Navigable throughout
ST. JOSEPH RIVER, Michigan	Dam at Berrien Springs, 24.7 miles above mouth
ST. MARY'S RIVER, Michigan	Navigable throughout
SEBEWAING RIVER, Michigan	Pere Marquette R.R. Bridge 1/2 mile above mouth
SHIAWASSEE RIVER, Michigan	Junction with Bad River
SPRING LAKE, Michigan	Navigable throughout
STURGEON RIVER, Michigan (Baraga & Houghton Co's)	50 miles above mouth
TANQUAMENON RIVER, Michigan	Lower Falls, approximately 16 miles above mouth
THUNDER BAY RIVER, Michigan	Dam near upper city limits of Alpena
TITTABAWASSEE RIVER, Michigan	Dam in Midland
TRAIL CREEK, Indiana	E Street Bridge at Michigan City, 1 mile above mouth

NAME OF WATERWAY

HEAD OF NAVIGATION

TRAVERSE RIVER, Michigan

Navigable 4,500 feet upstream of mouth

WALSKA RIVER, Michigan

D.S.S. & A.R.R. Bridge 3/4 mile above mouth

WHITE LAKE, Michigan

Navigable throughout

WHITE RIVER, Michigan

Head of White Lake, 6.8 miles from Lake Michigan

All Federal navigation projects are navigable waters of the United States to upstream and/or landward limit of project.

It should be understood that this merely represents the views of the Department since the jurisdiction of the United States can be conclusively determined only through judicial proceedings.

# Appendix 3

**NAVIGABLE WATERS OF THE UNITED STATES  
WITHIN THE REGULATORY JURISDICTION OF THE  
U.S. ARMY CORPS OF ENGINEERS  
DETROIT DISTRICT**

Updated: April 4, 2012

In administration of the laws enacted by Congress for the protection and preservation of the navigable waters of the United States, the Detroit District, under the authority of the Rivers and Harbors Act of 1899, currently exercises jurisdiction over the waterways listed below. Where applicable, we have listed the known or approximate upstream extent of our jurisdiction under the Rivers and Harbors Act.

With respect to an upper limit to navigability, a river will, at some point along its length, change from navigable to non-navigable. Very often that point will be at a major fall or rapids, or other place where there is a marked decrease in the navigable capacity of the river. The upper limit is therefore often the same point traditionally recognized as the head of navigation. Navigable waters of the United States that are lakes typically do not possess a head of navigation and are usually considered to be "navigable throughout." Examples of such "navigable throughout" waters in the Detroit District include the Great Lakes and their connecting channels.

On navigable waters of the United States that are non-tidal lakes and rivers, Federal regulatory jurisdiction extends laterally to the entire water surface and bed of a waterbody, which includes all the land and waters below or waterward of the ordinary high water mark (OHWM). Jurisdiction extends to the edge of all such waterbodies, even though portions of the waterbody may be extremely shallow, or obstructed by shoals, vegetation or other barriers. Marshlands and similar areas are thus considered navigable in law, but only so far as the area is subject to inundation by the ordinary high waters. In tributaries entering navigable lakes or the navigable reaches of rivers, the Corps of Engineers' jurisdiction extends into these tributaries to a point where such inundation by the ordinary high waters does or could otherwise occur. These tributary reaches are readily susceptible to improvements to enable navigation on the waterbody.

This list represents our effort to provide the public with a complete list of waterbodies for which we have made navigability determinations (shown in bold type) as well as sections of tributaries we have encountered that are waterward of the OHWM of a navigable water of the United States. The absence of a waterbody from this list should not be taken as an indication that a particular waterbody is not navigable or in Corps' jurisdiction (e.g., most canals open to navigable waters in the Detroit District are considered to be to be navigable waters but are not specifically noted in this list). For tributaries to navigable waters, even though this listing may use a recognizable landmark as a limit (e.g., road, railroad bridge), jurisdiction extends to the OHWM of the listed navigable waterbody, and we must conduct an on-site verification to make a definitive determination of the extent of our jurisdiction. We revise this document as new information warrants.

Michigan waters precede Indiana waters in this listing. Michigan waters are arranged in the following order: (1) Lake Michigan and tributaries; (2) Lake Superior and tributaries; (3) St. Marys River and tributaries; (4) Lake Huron and tributaries (with the Inland Route as a subsection); (5) St. Clair River and tributaries; (6) Lake St. Clair and tributaries; (7) Detroit River and tributaries; (8) Lake Erie and tributaries. The listing of Michigan waters starts in southwest Michigan with the Galien River, runs up Lake Michigan, and proceeds around the state in a clockwise manner.

WATERBODY

TRIBUTARY TO

JURISDICTIONAL CUT-OFF

**MICHIGAN**

<b>Lake Michigan</b>		Navigable throughout
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<b>Galien River</b>	(Berrien Co.)	I-94; T7S, R21W, Sec 36
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Grand Mere Lakes	Lake Michigan (Berrien Co.)	All 3 Lakes
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<b>St. Joseph River</b>	(Berrien Co.)	Dam at Berrien Springs, 24.7 miles above mouth
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Hickory Creek	St. Joseph River (Berrien Co.)	Cleveland Avenue; T5S, R19W, Sec 3/2
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<b>Paw Paw River</b>	(Berrien Co.)	Sand Creek; T4S, R18W, Sec 8
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\*\*\* (Please note the Benton Harbor Canal, which parallels Main Street, and empties into the Paw Paw River, was declared by Congress in 1963 to be a **Non**-navigable water of the United States east of Riverview Drive.) \*\*\*

Ox Creek	Paw Paw River (Berrien Co.)	North Shore Drive
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<b>Black River</b>	(Van Buren Co.)	Former Michigan Central RR bridge at South Haven Approximately 2.5 miles above mouth 300 feet from junction of Main Br & in South Branch
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Black River (Middle Br.)	Lake Michigan (Allegan Co.)	Baseline Road; T1N, R16W, Sec 31
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**WATERBODY****TRIBUTARY TO****JURISDICTIONAL CUT-OFF****Kalamazoo Lake**

(Allegan Co.)

Navigable throughout

**Kalamazoo River**

(Allegan Co.)

Allegan Dam about  
31.5 miles above  
confluence with Lake  
Michigan  
Miles about

Rabbit River

Kalamazoo River  
(Allegan Co.)Hwy 40; T3N, R14W,  
Sec 6**Lake Macatawa**

(Allegan Co.)

Navigable throughout

**Black/Macatawa  
River**

(Ottawa Co.)

U.S. 31;  
T5N, R15W, Sec 21Pigeon Lake/  
Pigeon RiverLake Michigan  
(Ottawa Co.)T6N, R16W, Sec 14  
(downstream of 2d  
Downstream powerline  
crossing)**Grand River**  
and all contiguous  
bayous

(Ottawa Co.)

Fulton Street bridge  
in Grand Rapids

Crockery Creek

Grand River  
(Ottawa Co.)I-96;  
T8N, R15W, Sec 23**Spring Lake**  
and all contiguous  
bayous

(Ottawa Co.)

Fruitport Rd/Bridge  
St (see Norris Ck)  
T9N, R16W, Sec 36

Norris Creek

Spring Lake  
(Muskegon Co.)Upstream of Fruitport  
Road/Bridge Street;  
T9W, R16W, Sec 36**Mona Lake**

(Muskegon Co.)

Navigable throughout

**Muskegon Lake**

(Muskegon Co.)

Navigable throughout



## WATERBODY

## TRIBUTARY TO

## JURISDICTIONAL CUT-OFF

<b>Muskegon River</b>	(Muskegon Co. & Newaygo Co.)	M-37 Highway Bridge, 39 ¼ miles above mouth
Bear Lake	Muskegon Lake (Muskegon Co.)	Russell Road crossing; includes all of Bear Lake T10N, R16W, Sec 7
Duck Lake	Lake Michigan (Muskegon Co.)	N-S Road; T11N, R17W, Sec 17/18
<b>White Lake</b>	(Muskegon Co.)	Navigable throughout
<b>White River</b>	(Muskegon Co.)	U.S. 31, 6.8 miles from confluence with L. Michigan (not Business Rt 31) T12N, R17W, Sec 22
Flower Creek	Lake Michigan (Oceana Co.)	~1.3 mi above mouth T13N, R18W, Sec 34
Stony Lake	Lake Michigan (Oceana Co.)	Marshville Pond; T14N, R18W, Sec 26
<b>Pentwater Lake</b>	(Oceana Co.)	Navigable throughout
<b>Pentwater River</b>	(Oceana Co.)	U.S. 31; T16N, R17W, Sec 31
North Branch Pentwater River	(Oceana Co.)	U.S. 31, ~1.3 mi upstream of Pentwater Lake T16N, R17W, Sec 19
Bass Lake	Lake Michigan (Mason Co.)	T17N, R18W, Sec 25, 26, 35, 36

## WATERBODY

## TRIBUTARY TO

## JURISDICTIONAL CUT-OFF

**Pere Marquette  
Lake**

(Mason Co.)

Navigable throughout

**Pere Marquette  
River**

(Mason Co.)

10 mi above mouth @  
N-S road through  
Scottsville  
T18N, R16W, Sec 19

Lincoln Lake

Lake Michigan

Lincoln River  
junction

Lincoln River

(Mason Co.)

@ N-S Road;  
T18N, R18W, Sec 2/1

Big Sable River  
(aka Hamlin Lake)

Lake Michigan  
  
(Mason Co.)

Hamlin Lake Dam, 1.1  
miles  
above mouth;  
T19N, R18W

**Manistee Lake**

(Manistee Co.)

Navigable throughout

**Manistee River**

(Manistee Co.)

6.6 miles above mouth  
(see 2011-00734-45)

Bar Lake/Swamp

Lake Michigan  
(Manistee Co.)

T22N, R17W/R16W, Sec 8  
18, 17, 24, 19

**Portage Lake**

(Manistee Co.)

Navigable throughout

**Arcadia Lake**  
(aka North Bar Lake)

(Manistee Co.)

Probable to Saint  
Pierre Road  
T24N, R16W, Sec 14

Lower Herring  
Lake

Lake Michigan  
(Benzie Co.)

T25N, R16W, Sec 14/23

**Betsie Lake**  
and Betsie River

(Benzie Co.)

3.3 miles above  
mouth  
T26N, R16W, Sec 36,

WATERBODY	TRIBUTARY TO	JURISDICTIONAL CUT-OFF
Platte River	Lake Michigan (Benzie Co.)	Downstream interface of Loon Lake and Platte River T27N R15W
South Bar Lake	Lake Michigan (Leelanau Co.)	Entire lake; T28N R15W, Sec 13 & 24
North Bar Lake	Lake Michigan (Leelanau Co.)	Entire lake; T28N R15W, Secs 12 & 13
Carp River/ Leelanau River	(Leelanau Co.)	Dam at Leland
Boardman River	Lake Michigan (Grand Traverse Co.)	1.1 mi above mouth; T27N, R11W, Sec 3
Petobego Pond	Lake Michigan (Antrim & Grand Traverse Co.)	Entire pond
Stream immediately south of Elk Rapids Harbor	Lake Michigan (Antrim Co.)	at rapids just upstream of footbridge
Elk River	Lake Michigan (Antrim Co.)	dam downstream of Dexter St. bridge
<b>Lake Charlevoix</b>	(Charlevoix Co.)	Navigable throughout
<b>Pine River</b>	(Charlevoix Co.)	Navigable throughout
Jordan River (south arm)	Lake Charlevoix (Charlevoix Co.)	0.85 miles above mouth; T32N, R7W, Sec 26
Boyne River	Lake Charlevoix (Charlevoix Co.)	Park Street Bridge

WATERBODY	TRIBUTARY TO	JURISDICTIONAL CUT-OFF
Stover Creek	Lake Charlevoix (Charlevoix Co.)	Upstream from the Mouth approx. 360 feet to Stover Creek Dam
Carp Lake River	Lake Michigan (Emmet Co.)	Wilderness Park Drive (C81) T39N, R4W, Sec 29
Pte. Aux Chenes River line	Lake Michigan (Mackinac Co.)	Logging Road @ 600 ft USGS contour north of section 13/24
Brevort River	Lake Michigan (Mackinac Co.)	0.3 mile above US-2; T41N, R5W, Sec 9
Paquin Creek	Lake Michigan (Mackinac Co.)	Approximately 500 Feet above mouth; south of US-2 T42N, R7W, Sec 6
Black River	Lake Michigan (Mackinac Co.)	Junction w/ East branch of Black River, 0.25 mile above mouth; T43N, R8W, Sec 29
Lower Millecoquins River	Lake Michigan (Mackinac Co.)	US-2, 0.3 mile above mouth T43N, R9W, Sec 30
<b>Manistique River</b>	(Schoolcraft Co.)	Upper end of lumber slips @ Manistique 0.75 mile above mouth
Milakokia River (Seul Choix Bay)	Lake Michigan (Schoolcraft Co.)	E-W Road, located 0.4 Mile above mouth; T41N, R13W, Sec 2
Little Fishdam	Lake Michigan (Delta Co.)	0.2 mile above US-2 bridge; T41N, R18W, Sec 33

WATERBODY	TRIBUTARY TO	JURISDICTIONAL CUT-OFF
Fishdam River	Lake Michigan (Delta Co.)	0.35 mile above mouth; T41N, R18W, Sec 32
Ogontz River Creek	Lake Michigan  (Delta Co.)	Junction of Johnston  13 mile above mouth; T41N, R20W, Sec 9
Rapid River	Lake Michigan (Delta Co.)	US-2 (0.75 mile above mouth); T41N, R21W, Sec 20
Sturgeon River	Lake Michigan (Delta Co.)	Minn/St. Paul/Soo RR 2.2 miles above mouth; T40N, R19W, Sec 6
Tacoosh River	Lake Michigan (Delta Co.)	US-2 (0.82 mile above mouth); T41N, R21W, Sec 20
Days River	Lake Michigan  (Delta Co.)	US-2; (0.62 mile above mouth); T40N, R22W, Sec 2
Whitefish River	Lake Michigan  (Delta Co.)	near confluence w/ Chippeny Creek T41N, R21W, Sec 10
Escanaba River	Lake Michigan (Delta Co.)	Mead Paper Co. dam; 1.8 miles above mouth T39N, R22W, Sec 7
Ford River (Green Bay)	Lake Michigan (Delta Co.)	1.1 miles above M-35 bridge; T38N, R24W, Sec 15
Bark River	Lake Michigan (Delta Co.)	0.1 mile above M-35 bridge; T37N, R24W, Sec 22, SE 1/4

WATERBODY	TRIBUTARY TO	JURISDICTIONAL CUT-OFF
<b>Cedar River</b> (Green Bay)	Lake Michigan  (Menominee Co.)	Junction with Elwood Creek 2.5 miles above mouth T35N, R25W, Sec 11
<b>Menominee River</b>	(Menominee Co.)	Dam, 2.5 miles above mouth; T31N, R27W, Sec 4
<b>Lake Superior</b>		Navigable throughout
Montreal River	Lake Superior	Foot of Superior Falls ~.3 miles Above the mouth T48N, R49W, Sec 15
<b>Black River Harbor</b>	(Gogebic Co.)	Harbor of Refuge; Sec 3/10 line, T49N, R46W
Iron River mile	Lake Superior  (Ontonagon Co.)	M-64 bridge; 0.1  above mouth; T51N, R42W, Sec 12
<b>Ontonagon River</b>	(Ontonagon Co.)	Milwaukee RR bridge; 0.76 mile above mouth; T52N, R40W, Sec 25
Flintsteel River	Lake Superior  (Ontonagon Co.)	Old RR grade; 0.2 Mile above mouth;  T52N, R39W, Sec 12
Firesteel River mouth;	Lake Superior  (Ontonagon Co.)	0.4 mile above  T52N, R38W, Sec 1
West Sleeping mouth; River	Lake Superior  (Ontonagon Co.)	0.6 mile above  T53N, R38W, Sec 14
East Sleeping River	Lake Superior (Ontonagon Co.)	T53N, R38W, Sec 13/14 line

## WATERBODY

## TRIBUTARY TO

## JURISDICTIONAL CUT-OFF

Little Misery River	Lake Superior (Ontonagon Co.)	T53N, R37W, Sec 16/21 line
Misery River	Lake Superior (Ontonagon Co.)	Lamprey wier/lowhead barrier dam; T53N, R37W, Sec 15
Elm River	Lake Superior  (Houghton Co.)	0.25 mile above mouth; T54N, R36W, Sec 30
<b>Keweenaw Waterway</b>	 (Houghton Co.)	Navigable throughout, including Portage Lake, Torch Lake and Torch Canal
Schlotz Creek	Keweenaw Waterway (Houghton Co.)	Houghton Canal Road; T55N, R34W, Sec 8/17 line
Pike River	Keweenaw Waterway (Houghton Co.)	Old U.S. 41 bridge; 1.5 miles above mouth; T53N, R33W, Sec 7
Pilgrim River	Keweenaw Waterway  (Houghton Co.)	US-41; 0.23 mile above mouth; T54N, R33W, Sec 5
Snake River	Keweenaw Waterway (Houghton Co.)	Sec 10 to 0.5 mile above mouth
<b>Sturgeon River</b>	  (Houghton & Baraga Cos.)	Prickett Dam, 50 Miles above mouth  T50N, R35W, Sec 15
Arnheim Ditch	Sturgeon River & Keweenaw Waterway (Houghton & Baraga Cos.)	Entire ditch

## WATERBODY

## TRIBUTARY TO

## JURISDICTIONAL CUT-OFF

**Traverse River**

(Houghton Co.)

Big Traverse Road  
bridge; 0.85 miles  
mouth (Harbor of  
Refuge)

Mud Lake Creek

Lake Superior  
(Houghton Co.)2 miles above mouth;  
T55N, R31W, Sec 25;  
& Little Rice Lake  
outlet to road;  
T55N, R32W, Sec 20Lake Lily  
(Copper Harbor)Lake Superior  
(Keweenaw Co.)Entire lake  
T59N, R28W, Sec 34**Lac La Belle**

(Keweenaw Co.)

Entire lake  
T57N & T58N, R29W,  
including canal to  
Lake Superior

Menge Creek

Lake Superior  
(Baraga Co.)Menge Road; Sec 20  
T50N, R34W

Huron River

Lake Superior  
(Marquette Co.)Marquette County  
line 0.6 mile above  
mouth T52N, R29W,  
Sec 13/18  
line

Pine River

Lake Superior  
(Marquette Co.)Section 21/22 - at  
big bend in river

Salmon Trout River

Lake Superior  
(Marquette Co.)confluence w/Sullivan  
Creek  
T52N, R27W, Sec 31Iron River  
mouth;Lake Superior  
  
(Marquette Co.)0.3 mile above  
  
T51N, R26W, Sec 18

Sauk Head Lake

Lake Superior  
(Marquette Co.)Entire lake and  
outlet tributary  
T50N, R26W



## WATERBODY

## TRIBUTARY TO

## JURISDICTIONAL CUT-OFF

Harlow Creek mouth;	Lake Superior  (Marquette Co.)	0.3 mile above  T49N, R25W, Sec 19
Dead River mouth	Lake Superior  (Marquette Co.)	0.94 mile above  @ Tourist Park Power Station T48N, R25W, Sec 10
Chocolay River	Lake Superior (Marquette Co.)	Main Street Bridge 0.5 mile above mouth, T47N, R24W, Sec 6
Laughing Whitefish River	Lake Superior  (Alger Co.)	0.1 mile above John H. Hammer Public Site; T48N, R22W, Sec 26
Deer Lake outlet	Lake Superior (Alger Co.)	M-28 bridge; T47N, R21W, Sec 17
AuTrain River	Lake Superior (Alger Co.)	Cameron Crossing Bridge; T47N, R20W, Sec 5
Sucker River	Lake Superior (Alger Co.)	Jct w/Grand Marais Creek; 2.48 miles above mouth T49N, R13W, Sec 3
Two Hearted River	Lake Superior (Luce Co.)	From mouth to south line of T50N, R9W, Sec 27
Little Two Hearted River	Lake Superior (Luce Co.)	From mouth to south line of T50N, R9W, Sec 24
<b>Little Lake</b>	 (Luce Co.)	Navigable throughout (Harbor of Refuge)

## WATERBODY

## TRIBUTARY TO

## JURISDICTIONAL CUT-OFF

Weatherhogs Lake and Creek complex	Lake Superior (Chippewa Co.)	T50N, R6W, Sec 6 & 7 T50N, R6W, Sec 1-4
Betsy River	Lake Superior (Chippewa Co.)	Whitefish Point Road bridge; T49N, R6W, Sec 3
<b>Tahquamenon River</b>	(Chippewa Co.)	Lower falls, approx. 16 miles above mouth; T49N, R7W, Sec 32
Naomikong Creek Roxbury Creek Road/Curley Ankodosh Creek	Lake Superior (Chippewa Co.)	North of Shoreline  Lewis Memorial Hwy T47N, R5W & R6W
<b>Waiska River</b>	(Chippewa Co.)	Duluth South Shore & Atlantic RR bridge; 0.75 mile above mouth
<b>St. Marys River</b>	(Chippewa Co.)	Navigable throughout including Lake \ George, Munuscong Lake, and Lake
Nicolet		
Mission Creek	St. Marys River (Chippewa Co.)	First unnamed tributary
Frechette Creek	St. Marys River (Chippewa Co.)	Riverside Drive; T47N, R1E, Sec 22
Ermatinger Creek	St. Marys River (Chippewa Co.)	Riverside Drive; T47N, R1E, Sec 26
Galloway Creek	St. Marys River (Chippewa Co.)	Approximately 0.35 mile from mouth T48N, R6W, Sec 28
Hursley Creek	St. Marys River (Chippewa Co.)	Scenic Drive; T46N, R1E, Sec 26
Sailors Creek	St. Marys River (Chippewa Co.)	Scenic Drive; T46N R2E, Sec 13

## WATERBODY

## TRIBUTARY TO

## JURISDICTIONAL CUT-OFF

**Charlotte River**

(Chippewa Co.)

First rapids, 1.3 miles above mouth;  
T45N, R2E, Sec 1Munuscong River  
(Munuscong Lake)St. Marys River  
(Chippewa Co.)Munuscong State Forest boat launch  
T44N, R1E, Sec 15Little Munuscong mouth  
River (Munuscong Bay)St. Marys River  
(Chippewa Co.)1.0 miles above  
T44N, R1E, Sec 11

Gogomain River

St. Marys River  
(Chippewa Co.)Gogomain Road; 0.97 mile above mouth  
T43N, R2E, Sec 1**Lake Huron**

Navigable throughout

Pigeon Cove Creek include  
(Drummond Island) waters  
Potagannissing Maxton  
River  
(Drummond Island)Lake Huron  
(Chippewa Co.)  
Lake Huron  
(Chippewa Co.)From mouth to  
all contiguous  
300 feet above  
Road Bridge;  
T42N, R6E, Sec 15Seaman Lake  
(Drummond Island)Lake Huron  
(Chippewa Co.)

Entire lake

Gravel Lake

Lake Huron  
(Chippewa Co.)

Entire lake

Albany Creek

Lake Huron  
(Chippewa Co.)Mouth to U.S.F.W.S. dam,  
T41N, R3E, Sec 5

**WATERBODY****TRIBUTARY TO****JURISDICTIONAL CUT-OFF**

Beavertail Creek	Lake Huron (Mackinac Co.)	M-134 bridge; T41N, R2E, Sec 5
Prentiss Creek	Lake Huron (Chippewa Co.)	M-134 bridge; T42N, R2E, Sec 31
McKay Creek	Lake Huron (Mackinac Co.)	0.5 mile upstream of mouth; T42N, R1E, Sec 27
Flowers Creek	Lake Huron (Mackinac Co.)	0.2 mile upstream of mouth; T42N, R1E, Sec 33
Steele Creek	Lake Huron (Mackinac Co.)	N Czech Lane culvert upstream of M-134 bridge T42N,R1W,Sec 19
Pine River (St. Martin Bay) mouth;	Lake Huron (Mackinac Co.)	Unnamed tributary; 1.0 mile above  T42N, R3W, Sec 3
Carp River (St. Martin Bay)	Lake Huron (Mackinac Co.)	First rapids, 0.8 mile above mouth T42N, R3W, Sec 20
Little Black River	Lake Huron (Cheboygan Co.)	U.S. 23

**INLAND ROUTE****Cheboygan River**

(Cheboygan Co.)

Navigable throughout

**Black River**Cheboygan River  
(Cheboygan Co.)Alverno Dam;  
T37N, R1W, Sec 35

## WATERBODY

## TRIBUTARY TO

## JURISDICTIONAL CUT-OFF

<b>Mullett Lake</b>		Navigable throughout
	(Cheboygan Co.)	
Mullett/Negro Creek (Hardwood St Forest)	Mullett Lake (Cheboygan Co.)	Forest boundary @ Sec 6, T36N, R2W,
Pigeon River (Pigeon River Bay)	Mullett Lake (Cheboygan Co.)	Southerly boundary of Sec 9, T35N, R2W; ~ 0.5 mi upstream of East Mullett Lake Rd
<b>Indian River</b>		Navigable throughout;
	(Cheboygan Co.)	
Little Sturgeon River	Indian River (Cheboygan Co.)	To junction of Crumley Creek T35N, R2W, Sec 29/30
<b>Burt Lake</b>		Navigable throughout
	(Cheboygan Co.)	
Carp Creek/ Little Carp River	Burt Lake (Cheboygan Co.)	Hogsback Road (Sec 4, T36N, R3W)
Sturgeon River	Burt Lake (Cheboygan Co.)	M-68 (T35N, R3W, Sec 25)
Maple River (Maple Bay)	Burt Lake (Cheboygan Co.)	Brutus Rd (Emmet Co.) T36N, R4W, N. boundary of Sec 25
<b>Crooked River</b>		Navigable throughout
	(Cheboygan Co.)	
<b>Crooked Lake</b>		Navigable throughout
	(Emmet Co.)	
Pickeral Lake & Pickeral Channel	Crooked Lake (Emmet Co.)	T35N, R4W, entire to the mouth of Cedar Creek
Minnehaha Creek	Crooked Lake	Pickeral Lake Road

## WATERBODY

## TRIBUTARY TO

## JURISDICTIONAL CUT-OFF

(Emmet Co.)

T35N, R4W, Sec 32;

Round Lake &  
its outletCrooked Lake  
(Emmet Co.)Entire lake and  
Mud & Spring Lakes**END OF INLAND ROUTE**

Bell River

Lake Huron  
(Presque Isle Co.)T33N, R8E, entire  
system west of False  
Presque IsleGrand Lake Outlet  
outlet  
(Thompsons Harbor)Lake Huron  
(Presque Isle Co.)Dam located at  
  
of Grand Lake; 1.8  
miles above mouth of  
Lake Huron;  
T34N, R7E, Sec 23Swan Lake & conn.  
unnamed trib to  
Lake HuronLake Huron  
(Presque Isle Co.)T35N, R6E, Sec 20,  
29, 32, & 33

Trout River

Lake Huron  
(Presque Isle Co.)200 ft upstream  
of Linden St bridge

Black Mallard River

Lake Huron  
(Presque Isle Co.)

U.S. 23 bridge

Ocqueoc River  
above  
(Bell Landing)Lake Huron  
(Presque Isle Co.)U.S. 23; 0.6 mile  
mouth;  
T36N, R3E, Sec 21

Grass Creek

Lake Huron  
(Alpena Co.)0.7 mile above mouth;  
T32N, R9E, Sec 34**Thunder Bay River**

(Alpena Co.)

9th Street Dam

Devils River

Lake Huron

East West road 0.45

## WATERBODY

## TRIBUTARY TO

## JURISDICTIONAL CUT-OFF

	(Alpena Co.)	Mile above mouth at Lake Huron T29N, R8E, Sec 12
Black River	Lake Huron (Alcona Co.)	South Shore Road; T28N, R9E, Sec 24
Mill Creek	Lake Huron (Alcona Co.)	Wier lakeward of Lake St. in Harrisville T26n, R10E, Sec 12
<b>AuSable River</b>	(Iosco Co.)	Foote Dam; T24N, R8E, Sec 34/35
Van Etten Creek	AuSable River (Iosco Co.)	Dam near mouth of Van Etten Lake; T24N, R9E, Sec 27
Old/Dead AuSable River	Lake Huron AuSable River (Iosco Co.)	In entirety
Tawas Lake and Tawas River	Lake Huron (Iosco Co.)	All of Lake and River
E. Branch AuGres River	Lake Huron (Arenac Co.)	Noble Road; T20N, R7E, Sec 12/13
<b>AuGres River</b>	Lake Huron (Arenac Co.)	U.S. 23 bridge
Rifle River (Wigman Bay)	Lake Huron (Arenac Co.)	Stover Road; 0.8 mile Lake Huron T19N, R5E, Sec 36
Rifle River (old channel)	Lake Huron (Arenac Co.)	T18N & T19N boundary at R5E
<b>Pine River</b>	Lake Huron (Arenac Co.)	Arenac State Road Bridge, 2.0 miles above mouth of Lake Huron; T18N, R5E, Sec 5

WATERBODY	TRIBUTARY TO	JURISDICTIONAL CUT-OFF
Saganing River (McClarity	Lake Huron  (Arenac Co.)	First bridge  Rd/Worth Rd); T18N,R4E, Sec 30
Pinconning River	Lake Huron (Bay Co.)	North & South Road at 1/2 of S25 R17N, R4E, Sec 25
Johnson Drain	Lake Huron  (Bay Co.)	Approximately 3700 Feet to mouth; T16N, R4E, Sec 1
Tebo Drain	Lake Huron (Bay Co.)	Approximately 2300 feet to mouth; T16N, R4E,Sec 12
Tobico Marsh/ Lagoon & outlet(s)	Lake Huron (Bay Co.)	Entire system
<b>Kawkawlin River</b>	 (Bay Co.)	Michigan Central RR bridge, 4 miles above mouth
<b>Tittabawassee River</b>	 (Midland Co.)	Dow dam at Midland North of Brine Pond #6 T14N, R2E, Sec 21
Bullock Creek	Tittabawassee R.  (Midland Co.)	At the bridge on Progress Place, approximately 4000 feet to mouth T14N, R2E, Sec 28
Squaconning Creek	Saginaw River (Bay Co.)	Four Mile Road; T13N, R4E, Sec 2 & 3
Dutch Creek	Saginaw River  (Bay Co.)	NB I-75/23/10; 2.5 miles above mouth of mouth of Saginaw River T13N, R4E, Sec 1



WATERBODY	TRIBUTARY TO	JURISDICTIONAL CUT-OFF
Quanicassee River	Lake Huron (Bay & Tuscola Co.)	3.3 miles above mouth of Lake Huron T13N, R6E, Sec 1 & 12
<b>Saginaw River</b>	(Saginaw Co.)	Navigable throughout
Cheboyganing Creek	Saginaw River (Saginaw Co.)	Portmouth Road; T12N, R5E, Sec 1 & 2,
Crow Island State Game Area	Saginaw River (Saginaw Co.)	T13N, R5E, Secs 28, 32 33, T12N, Sec 4
Lake Linton (Ojibway Island)	Saginaw River (Saginaw Co.)	T12N, R4E, Sec 25 & 26
Columbia Drain	Saginaw River (Saginaw Co.)	T14N, R5E, Sec 31
Cass River	Shiawassee River (Saginaw Co.)	Grand Trunk RR Bridge T11N, R5E, Sec 18 (Bridgeport quad)
<b>Shiawassee River</b>	(Saginaw Co.)	Junction with Bad River
Shiawassee River State Game Area	Shiawassee River (Saginaw Co.)	Hulien Road; T10N, R3E, Sec 10/3 and Sec 2/11 boundaries
Shiawassee National Wildlife Refuge	Shiawassee River (Saginaw Co.)	All of Refuge
Ferguson Bayou Crystal Bayou	Shiawassee River (Saginaw Co.)	Entire length; T11N, R4E
Flint River	Shiawassee River (Saginaw Co.)	At confluence with Mistequay Creek; T11N, 4E, Sec 32

WATERBODY	TRIBUTARY TO	JURISDICTIONAL CUT-OFF
Bad River	(Saginaw Co.)	Upper city limits of St. Charles
Marsh and Swan Creek	Shiawassee River (Saginaw Co.)	Conrail Teft Road/RR; T11N, R3E, Sec 17
Mud Creek	Lake Huron (Huron Co.)	Approximately 2000 Feet from culvert at Filion Rd. T17N, R10E, Sec 22
Willow Creek	Lake Huron (Huron Co.)	Lighthouse Road, 0.4 Mile above mouth; T18N, R14E, Sec 33
Bird Creek	Lake Huron (Huron Co.)	Pointe Barques Road; 0.3 mile above mouth T19N, R13E, Sec 29
Elm Creek	Lake Huron (Huron Co.)	M-25; T15N, R16E, Sec 17
<b>Pigeon River</b>	(Huron Co.)	Upper village limits of Caseville
White River	Lake Huron (Huron Co.)	M-25; T15N, R16E, Sec 20
<b>Sebewaing River</b>	(Huron Co.)	Approximately 1.25 miles above RR bridge to confluence of State and Columbia Drains
<b>Pinnebog River</b>	(Huron Co.)	To M-25
White River	Lake Huron (Huron Co.)	at least to M-25
<b>St. Clair River</b>	(St. Clair Co.)	Navigable throughout
<b>Pine River</b>	(St. Clair Co.)	Detroit Port Huron RR bridge, 3 miles above mouth

WATERBODY	TRIBUTARY TO	JURISDICTIONAL CUT-OFF
Galbraith Drain	Lake Huron (St. Clair Co.)	M-25; T7N, R17E, Sec 4
Birch Creek	Lake Huron (St. Clair Co.)	M-25, 0.2 mile above T8N, R17E, Sec 5
Milwaukee Creek	Lake Huron (St. Clair Co.)	M-25; T8N, R17E, Sec 29
Black River Canal	Lake Huron (St. Clair Co.)	From Lake Huron to Black River
<b>Black River</b>	(St. Clair Co.)	Beach Road, approximately 7 miles above mouth T7N, R17E, Sec 32
Stocks Creek	Black River (St. Clair Co.)	~Water Street
Fisher Creek	St. Clair River (St. Clair Co.)	OHWM is beyond M-29
Batteaux Canal	St. Clair River (St. Clair Co.)	Navigable throughout
Bunce Creek	St. Clair River (St. Clair Co.)	~1650 Feet upstream
<b>Belle River</b>	(St. Clair Co.)	Meisner Road (updated in 2009)
Harsens Island	St. Clair River (St. Clair Co.)	all waters, drains, ditches, canals; St. Clair Flats; State Wildlife Area
Dickinson Island	St. Clair River (St. Clair Co.)	All waters, drains, ditches, canals; St. Clair Flats; State Wildlife Area

## WATERBODY

## TRIBUTARY TO

## JURISDICTIONAL CUT-OFF

Little Swan Creek	St. Clair River (St. Clair Co.)	Upstream of Dixie Highway at OHWM (Swan Creek)
Swan Creek (Fair Haven)	Lake St. Clair (St. Clair Co.)	1.8 miles above mouth of Lake St. Clair (577.3' NGVD 1929) T3N, R15E, Sec 15
Marsac Creek	Lake St. Clair  (St. Clair Co.)	Hwy 29, 0.3 mile above mouth at Lake St. Clair T3N, R15E, Sec 15
Beaubien Creek (Perch Point)	Lake St. Clair (St. Clair Co.)	0.8 mile (577.3' NGVD 1929) T3N, R15E & R16E boundary, Sec 25
Pearl Beach Canal system	St. Clair River  (St. Clair Co.)	T2N & T3N, R15E & R16E, Sec 36, 31, 1 & 6
Marine City Drain & residential canals	St. Clair River  (St. Clair Co.)	T2N & T3N, R16E, Sec 2 & P.C. No. 200; 1.1 miles above mouth of St. Clair River
Pointe Aux Chenes canals	St. Clair River (St. Clair Co.)	T2N, R16E, Sec 9 & 10
<b>Lake St. Clair</b>		Navigable throughout
Crapaud Creek/ Frog Creek	Lake St. Clair (Macomb Co.)	T3N, R14E, New Baltimore @ 1st road crossing located 0.15 mile above mouth of Lake St. Clair

WATERBODY	TRIBUTARY TO	JURISDICTIONAL CUT-OFF
Fish Creek	Lake St. Clair (Macomb Co.)	2.5 miles above mouth (Salt River) at 23 Mile Road/M-29, T3N, R14E, Sec 22
Salt River	Lake St. Clair (Macomb Co.)	~ 1 mile north 23 mile road; T3N, R14E, Sec 23 & 27; 2.8 miles above mouth at Lake St. Clair, includes entire adj canal system @ Anchor Bay Harbor (577.3' NGVD 1929)
Vase Creek	Lake St. Clair (Macomb Co.)	Jefferson Avenue
Auvase Creek	Lake St. Clair (Macomb Co.)	T3N, R14E, Sec 29, Sugar Bush Road
Lottivue Canal System	Lake St. Clair (Macomb Co.)	T3N, R14E, Sec 26, entire canal system waterward of Jefferson Avenue
Anchor Bay Shores Canal Systems	Lake St. Clair (Macomb Co.)	T3N, R14E, Sec 33, P.C. Nos. 146 & 147, entire canal system waterward of Jefferson Avenue
Black Creek/ Canal System	Lake St. Clair & Clinton River (Macomb Co.)	T2N, R14E, P.C. Nos. 168, 319, 238, 151 to includes entire canal system
<b>Clinton River</b>	(Macomb Co.)	Gratiot Avenue Hwy Bridge, Mt. Clemens

WATERBODY	TRIBUTARY TO	JURISDICTIONAL CUT-OFF
Unnamed Creek	Lake St. Clair (Macomb Co.)	Just SE of Metro Parkway T2N, R14E, P.C.#133,207, 130, 616
<b>Clinton River Cutoff</b>	Lake St. Clair (Macomb Co.)	Navigable throughout
Belvidere Bay Canal System	Lake St. Clair (Macomb Co.)	T2N, R14E, P.C. Nos. 373, 374, 140 to entire canal system
Milk River (Lakefront Park)	Lake St. Clair (Macomb Co.)	T1N, R13E, P.C. No. 544, at dam located 0.4 mile above mouth at Lake St. Clair
Fox Creek Canal System (Windmill Point)	Lake St. Clair/ Detroit River  (Wayne Co.)	Jefferson Avenue, (includes entire canal system south of Jefferson Avenue, which also includes the canals south of Scripps Avenue), T1S, R13E
<b>Detroit River</b>	 (Wayne Co.)	Navigable throughout
Conner Creek	Detroit River (Wayne Co.)	Freud Avenue; T2S R12E
Belle Isle inland Waters, including -Lake Tacoma -Lake Muskoday -Lake Okonoka -Blue Heron Lagoon & connecting tributaries	Detroit River (Wayne Co.)	Navigable throughout

**WATERBODY****TRIBUTARY TO****JURISDICTIONAL CUT-OFF**

Marsh Creek	Detroit River (Wayne Co.) (see 02-007-000-0)	at least to Fort St. (574.3' NGVD 1929 may be further upstream)
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Brownstown Creek (joins Marsh Creek)	Detroit River (Wayne Co.) (see 02-007-000-0)	at least to Contrail RR Sec 335, T4S/R10E (~ 574.3 NGVD 1929)
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**River Rouge**

(Wayne Co.)

Michigan Central RR/  
Penn Central RR  
bridge near  
Melvindale  
near Schafer Road,  
upriver from Turning  
BasinThorofare Canal  
(Grosse Ile)Detroit River  
(Wayne Co.)Grosse Ile, entire  
canal system T4S,  
R11EFrenchman Creek  
(Grosse Ile)Detroit River  
(Wayne Co.)north of Groh Rd  
(Loma Lane)  
T4 & 5S, P.C. Nos.  
554 & 557Frank and Poet  
Drain (Gibraltar)Detroit River  
(Wayne Co.)  
  
(see 02-007-000-0)VanHorn Rd or Fort  
St.(Sec 25) is  
~ cutoff;  
574.3' NGVD 1929 likely  
further upstream**Ecorse River**

(Wayne Co.)

RR & gas line  
0.3 mile above mouth  
T3SE, R11E**Huron River**

(Wayne Co.)

U.S. 24 bridge at  
Flat Rock

WATERBODY	TRIBUTARY TO	JURISDICTIONAL CUT-OFF
Silver Creek	Huron River (Wayne Co.)	Streicher Road @ Smith Creek junction T5S,R10E, Sec 14, 1.9 miles above mouth of Huron River
Morrison Drain	Huron River (Wayne Co.) (see 02-007-000-0)	probably Woodruff Road; at 575' NGVD 1929 cutoff on bank, T5S, R10E, Sec 11
<b>Lake Erie</b>		Navigable throughout
Laudenschlager Drain	Lake Erie (Monroe Co.)	Wassanova Road; T5S, R10E, Sec 26,
Pt. Mouillee State State Game Area	Lake Erie (Monroe Co.)	entire Area
Swan Creek	Lake Erie (Monroe Co.)	immediately downstream N. Dixie Hwy Bridge (574.2' NGVD 1929)
Walker Drain	Lake Erie (Monroe Co.)	Upstream of Brest Road; T6s, R10E, Sec 30, (entire canal system)
Stony Creek	Lake Erie (Monroe Co.)	1.3 miles (574.2' NGVD 1929)
Sandy Creek	Lake Erie (Monroe Co.)	1.5 miles (574.2' NGVD 1929)
Sterling State Park; all canals	Lake Erie (Monroe Co.)	T6 & 7S, R9E, entire canal system
Plum Creek	Lake Erie (Monroe Co.)	2.6 miles (574.2' NGVD 1929)



WATERBODY	TRIBUTARY TO	JURISDICTIONAL CUT-OFF
Woodchuck Creek	Lake Erie (Monroe Co.)	LaPlaissance Road; T7S, R8E, P.C. No. 161
<b>LaPlaissance Creek</b>	(Monroe Co.)	LaPlaissance Road Bridge
Pike Swale	LaPlaissance Creek (Monroe Co.)	T7S, R9E, P.C. No. 419, 0.35 miles from confluence of LaPlaissance Creek
Otter Creek	Lake Erie (Monroe Co.)	4.0 miles (at U.S. 125) (574.2' NGVD 1929)
Halfway Creek (North Maumee Bay)	Lake Erie (Monroe Co.)	~3.3 miles (measured from Erie State Wildlife Refuge) Junction of Santee Creek & Halfway Creek (~Conrail RR bridge)
Muddy Creek (Allens Cove)	Lake Erie (Monroe Co.)	I-75; T7 & 8S, R8E, Sec 36 and 1; 1.9 miles above mouth
LaPointe Drain	Lake Erie  (Monroe Co.)	I-75; T8S, R8E, Sec 10; 0.65 mile above mouth
Sulphur Creek	Lake Erie (Monroe Co.)	T7S, R8E, boundary of P.C. No. 360/377; 0.37 mi above NE/SW road above Toledo Beach
Shantee Creek	Lake Erie (Monroe Co.)	Michigan-Ohio state line; T9S, R8E, Sec 4
Bay Creek	Lake Erie (Monroe Co.)	I-75; T8S, R8E, Sec 15

WATERBODY	TRIBUTARY TO	JURISDICTIONAL CUT-OFF
Woodtick Peninsula Area (Erie State Game Area)	Lake Erie (Monroe Co.)	T8S, R8E, entire system
Flat Creek	Lake Erie (Monroe Co.)	T8S, R8E, Sec 28
Ottawa River	(Monroe Co.)	Detroit & Toledo Shore Line Bridge
Raisin River	(Monroe Co.)	Michigan Central RR bridge at Monroe 2.8 miles above mouth
Mason Run	Raisin River (Monroe Co.)	2.8 miles from mouth at River Raisin T7S, R9E

## INDIANA WATERS

Iroquois River	(Jasper Co.)	Navigable throughout
Kankakee River	Illinois River (Newton/Jasper/LaPorte/Starke & St. Joseph Counties)	Navigable throughout, (to confluence of Geyer Ditch located just west of SR 223), T36N, R1E, Sec 4, NW ¼
Maumee River	(Allen Co.)	Hosey Dam in Fort Wayne

# Appendix 4



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
LANSING



DAN WYANT  
DIRECTOR

November 9, 2011

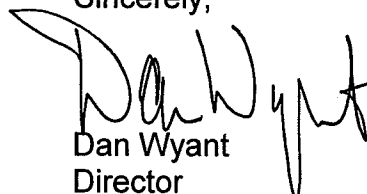
Ms. Susan Hedman, Regional Administrator  
United States Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard (R-19J)  
Chicago, Illinois 60604-3590

Dear Ms. Hedman:

Enclosed is one signed original of the Clean Water Act Section 404 Program Memorandum of Agreement between the United States Environmental Protection Agency (USEPA) and the Michigan Department of Environmental Quality (MDEQ). We will maintain one signed original in our files.

We look forward to working with the USEPA on Michigan's Section 404 Program. If you have any questions, please contact Mr. William Creal, Chief, Water Resources Division, at 517-335-4176; [crealw@michigan.gov](mailto:crealw@michigan.gov); or MDEQ, P.O. Box 30458, Lansing, Michigan 48909-7958.

Sincerely,

  
Dan Wyant  
Director  
517-373-7917

Enclosure

cc/enc: Ms. Tinka Hyde, USEPA, Region 5  
Mr. John Konick, United States Army Corps of Engineers  
Ms. Barb Hosler, United States Fish and Wildlife Service  
Mr. Jim Sygo, Deputy Director, MDEQ  
Mr. William Creal, MDEQ

**MEMORANDUM OF AGREEMENT  
BETWEEN THE  
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY  
AND THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 5  
  
ADMINISTRATION OF SECTION 404 OF THE CLEAN WATER ACT  
BY THE STATE OF MICHIGAN**

This Memorandum of Agreement (MOA) between the Michigan Department of Environmental Quality, hereinafter referred to as the MDEQ, and the United States Environmental Protection Agency, Region 5, hereinafter referred to as the USEPA, defines the federal and state roles in carrying out the policies, regulations, and procedures necessary to administer the permit program established pursuant to Section 404 of the Clean Water Act (CWA), Title 33 of the United States Code, Section 1251 *et seq.*, hereinafter referred to as the "404 Program," and to facilitate program coordination between the MDEQ and USEPA.

WHEREAS, Section 404(g) of the CWA provides for state administration of the 404 Program regulating discharges of dredged or fill material to waters of the United States; and

WHEREAS, the MDEQ has, since 1984, operated a state program in accordance with the requirements of Section 404(g) of the CWA and Title 40 of the Code of Federal Regulations (CFR) Part 233, 404 State Program Regulations; and

WHEREAS, the USEPA has approved the state program pursuant to Section 404(h),

NOW, THEREFORE, IT IS AGREED THAT:

**1) Authorities.**

The MDEQ shall administer and enforce the 404 Program in accordance with those state laws and administrative rules that the USEPA has defined as components of the federally authorized 404 Program in the State of Michigan (40 CFR Section 233.70), and in accordance with the Section 404 State Program Regulations (40 CFR Part 233), the CWA, Section 404(b)(1) Guidelines (40 CFR Part 230, Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material) (404 Guidelines), and provisions contained in this MOA and the agreement between the MDEQ and the United States Army Corps of Engineers (USACE).

**2) Compliance monitoring and enforcement.**

- a) The MDEQ has primary responsibility for compliance monitoring and enforcement provisions of the State 404 Program, and shall take timely and appropriate enforcement action against persons in violation of permit conditions for all permits issued under the State 404 Program, and against persons conducting unauthorized discharges of dredge or fill materials into waters of the United States over which the MDEQ has assumed jurisdiction under the State 404 Program.
- b) The MDEQ shall notify the USEPA of the status of compliance and enforcement actions through submission of an annual report as outlined in paragraph 7 of this MOA.

- c) When a violation is identified by the MDEQ that meets the criteria in paragraph 3 of this MOA -- such that direct review by the USEPA would be required under MDEQ permit processing procedures -- the MDEQ shall initiate coordination with the USEPA. As part of this coordination, at a minimum, the MDEQ shall provide a summary of the unauthorized activity and inform the USEPA of the status of the file as enforcement actions are taken, as well as any decision to accept an after-the-fact permit application.

In the event that an after-the-fact permit application is accepted, the MDEQ shall forward such application to the USEPA, and the USEPA shall, as appropriate, provide comments to the MDEQ. The MDEQ shall consider, and as appropriate incorporate, the comments of the USEPA in accordance with MDEQ permit processing procedures and the Section 404(b)(1) Guidelines.

- d) Under appropriate circumstances, the MDEQ may refer information regarding possible or alleged violations to the USEPA, and may request that the USEPA consider initiating a parallel or independent enforcement action. Such circumstances include but are not limited to:
  - i) Violations that have or have a reasonable potential to have direct impact on waters of another state.
  - ii) Major or repeat offenses.
  - iii) Violations that have or have a reasonable potential to have major adverse resource impact or an impact on special federal resources, such as federally listed threatened or endangered species.
- e) The MDEQ shall provide the public notice of and a 30-day public comment period on any proposed settlement of a civil enforcement action that is filed in state court. Notice may be provided to the public via the MDEQ Calendar or other appropriate means.
- f) In the event that the MDEQ proposes to resolve a compliance or enforcement issue through a consent agreement (administrative or judicial), and where the impact of the violation is such that federal review would not be waived as described in paragraph 3 of this MOA, the MDEQ shall provide the USEPA with an opportunity to review and comment on the draft consent agreement prior to signature. Once agreement is reached on a consent agreement, the MDEQ shall provide a copy of the executed agreement to the USEPA. If the USEPA objects to authorization of an activity through the consent agreement, any subsequent state authorization shall not provide authorization under Section 404 of the CWA.
- g) The USEPA may request the opportunity to review any compliance and enforcement record. The MDEQ shall provide to the USEPA a copy of the file when requested. The USEPA may initiate independent or parallel enforcement action in accordance with Sections 309 and 404(n) of the CWA.
- h) Prior to proceeding with federal enforcement action against a possible or alleged State 404 Program permit violator or unauthorized discharger, and for purposes of providing notice only, the USEPA shall inform the MDEQ that federal enforcement action is to be initiated. This notification shall be made to the director of the MDEQ or his/her designee. It is expected that preliminary staff discussions will take place between USEPA and MDEQ representatives before initiation of federal enforcement action.

- i) The MDEQ shall not oppose intervention by any citizen in a state civil enforcement action under the 404 Program when permissive intervention in a state enforcement action is authorized by Michigan law.

**3) Federal review of permit applications and waiver of review.**

The USEPA, USACE, and United States Fish and Wildlife Service (USFWS) shall, pursuant to Section 404(j) of the CWA, review each permit application received by the MDEQ except for those categories of discharges for which such review has been waived in accordance with Section 404(k) of the CWA.<sup>1</sup>

The USEPA, after consultation with the USACE and USFWS, shall waive the requirements of Section 404(j) for all but the following classes or categories of discharge:

- a) Draft general permits.
- b) Major discharges. Major discharges are defined as applications for permits that:
  - i) Affect one or more acres of wetland.
  - ii) Include new construction of breakwaters or seawalls with a total length of more than 1,000 feet.
  - iii) Include enclosure of more than 300 feet of a stream in one or more segments.
  - iv) Require relocation or channelization of more than 1000 feet of a stream in one or more segments.
- c) Discharges with reasonable potential for affecting endangered or threatened species as determined by the USFWS.
- d) Discharges with reasonable potential for adverse impacts on waters of another state.
- e) Discharges known or suspected to contain toxic pollutants in toxic amounts (Section 101(a)(3) of the CWA) or hazardous substances in reportable quantities (Section 311 of the CWA).
- f) Discharges located in proximity of a public water supply intake.
- g) Discharges within critical areas established under state or federal law, including national and state parks, fish and wildlife sanctuaries and refuges, national and historical monuments, wilderness areas and preserves, sites identified or proposed under the National Historic Preservation Act, and components of the National Wild and Scenic Rivers System.
- h) Sites identified by the USEPA in advance under provisions of the 404 Guidelines.

The USEPA retains the right to terminate, at any time, in whole or in part, any waiver of the requirements of Section 404(j) by sending written notice of determination to the MDEQ.

This agreement does not limit, diminish, or constitute an expressed or implied waiver of the authority of USEPA to prohibit certain discharges pursuant to Section 404(c).

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<sup>1</sup> The National Marine Fisheries Service has waived review of all permit applications.

**4) Coordination with other states and tribes.**

- a) Whenever the MDEQ receives an application for a permit that has a reasonable potential to impact the waters of the states of Indiana, Ohio, or Wisconsin, or waters that USEPA has identified to the MDEQ as being within the jurisdiction of federally recognized Indian tribes, the MDEQ shall transmit a copy of the public notice to the impacted state or tribe and to the USEPA. The USEPA shall assist in the identification of regulatory contacts in these other states and tribes.
- b) The impacted state or tribe shall be requested to provide comments to the MDEQ and the USEPA within 45 days of the date of the public notice regarding the potential impact of the proposed project on the waters of such state or tribe.
- c) The MDEQ shall consider the comments and concerns of the potentially impacted state or tribe when making a decision on the application, and shall provide a copy of the final permit decision to a state or tribe that provides comments.
- d) The USEPA may object to the issuance of a Section 404 permit by the MDEQ if it finds that the proposed project would fail to comply with the 404 Guidelines due to the impact on waters of another state or tribe. In this instance, the MDEQ shall proceed as specified in Section 404(j) of the CWA and paragraph 5 of this MOA.
- e) Both the U.S. EPA and the MDEQ agree that this MOA does not waive any legal claims, rights, or positions that the U.S. EPA or the MDEQ have over what constitutes "Indian lands" or "Indian country", as the U.S. EPA defines those terms

**5) Permit processing and federal comment.**

- a) The MDEQ shall promptly submit permit applications in the classes or categories identified in paragraph 3 of this MOA to the regional administrator of the USEPA for review, coordination, and, where applicable, objection in accordance with Section 404(j) of the CWA.
- b) Material submitted to the USEPA shall include:
  - i) A copy of the public notice for any complete permit application received by the MDEQ, except those for which permit review has been waived under this MOA. Any supplemental or additional materials submitted to the MDEQ, including but not limited to information on project alternatives, environmental assessment, or mitigation plans, shall also be forwarded promptly to the USEPA. Whenever requested by the USEPA, the MDEQ shall supply the regional administrator with copies of public notices for permit applications, even for projects for which permit review has been waived.
  - ii) A copy of each draft general permit whenever the state intends to issue a general permit, including minor project categories defined under state law.
  - iii) For permit applications that are subject to direct federal review, notification of when the MDEQ takes a permit action, a copy of every permit issued, and a copy of any denial of a permit.
  - iv) A copy of the MDEQ's response to comments or recommendations made by another state if the MDEQ does not accept such recommendations.



Materials may be forwarded to the USEPA by electronic means.

- c) The regional administrator shall, not later than 30 days from the date of receipt of a permit application from the MDEQ, notify the MDEQ if the USEPA does not intend to review the permit application.

If the regional administrator intends to provide written comment, he/she shall coordinate the region's review with the USACE and the USFWS, and submit comments to the MDEQ in accordance with the requirements of, and in the time frames specified in, Section 404(j) of the CWA. However, the USEPA shall make every attempt to provide comments within the time frame specified in Michigan law. The MDEQ shall notify the USEPA of decision deadlines for each application.

- d) The MDEQ shall respond to any such comments received from the USEPA in the manner specified in Section 404(j) of the CWA and appropriate sections of 40 CFR Part 233. The MDEQ shall provide a copy of a draft permit, with all conditions, to the USEPA to demonstrate that federal comments have been fully addressed.
- e) In the event that the MDEQ does not resolve an objection by the USEPA to issuance of a permit, but must issue a permit in order to comply with requirements of state law, then the permit issued by the State of Michigan shall not provide authorization under Section 404 of the CWA, and the applicant shall be notified of this fact in writing.

#### **6) Coordination of mitigation banking.**

- a) The MDEQ and USEPA agree that mitigation banking projects shall be subject to review by an Interagency Review Team (IRT) consistent with the 404 Guidelines, Subpart J. The IRT shall be chaired by the MDEQ, except where the USACE retains Section 404 jurisdiction, in which case the MDEQ and the USACE shall co-chair the IRT.
- b) The USEPA shall participate on the IRT.

#### **7) Reporting.**

- a) The MDEQ shall submit to the regional administrator of the USEPA an annual report evaluating the state's administration of its 404 Program, identifying problems the state has encountered in administration of its program, and recommendations for resolving these problems. The report shall include:
  - i) An assessment of the cumulative impact of the state's permit program on the integrity of state regulated waters.
  - ii) A summary of the number and nature of individual and general permits issued, modified, or denied during the year, and permits not yet processed.
  - iii) A summary of the number and nature of violations or suspected violations identified and the nature of enforcement actions taken.
  - iv) An estimate of the extent of total impact to state regulated waters from individual and general permits.
  - v) The number of acres of each of the categories of state regulated waters (lakes, streams, and wetlands) that were impacted by dredge or fill material during the year (by either authorized or known unauthorized activities) in excess of one surface acre per project.
  - vi) A summary of any significant changes in program operations or procedures.
  - vii) Other information of particular concern or interest.

- b) Within 60 days of receipt of the annual report, the USEPA will complete review of the report and transmit comments, questions, or requests for additional information to the MDEQ.
- c) The MDEQ may modify the report to address the comments of the USEPA. The final report shall be made available to the public.
- d) The period for the annual report shall be the state fiscal year ending September 30, and the report shall be submitted to the USEPA by December 31 of each year.

**8) Program review and oversight.**

- a) The USEPA may, in accordance with Section 404(i) of the CWA, conduct periodic evaluations of Michigan's 404 Program.


**9) Modifications.**

- a) The MDEQ shall promptly notify the USEPA of any proposed or actual change in its legal authority that may alter its ability to administer the 404 Program, including:
  - i) An action by the State Legislature to strike down or limit state authorities, or that contemplates cessation of the administration of the Section 404 Program by the State of Michigan.
  - ii) An action by a state court striking down or limiting state authorities.
  - iii) Revision of the state's legal authorities needed to maintain consistency with changes to applicable federal regulations.
  - iv) Proposed transfer of the program in whole or in part to another state agency.
- b) In response to notification of a change in the state program, the USEPA shall inform the MDEQ in writing of specific concerns regarding state authority, and shall provide the state an opportunity to make any necessary program corrections in accordance with 40 CFR Part 233.
- c) In the event that the MDEQ determines that it will no longer administer a 404 Program at the state level, the MDEQ shall provide notice to the USEPA and the USACE not less than 180 days prior to cessation of program operation, and shall arrange for transfer of all program materials to the USACE.

- d) Amendments to this MOA shall be in writing. They may be proposed by either party, and shall be effective upon the signature of both parties.

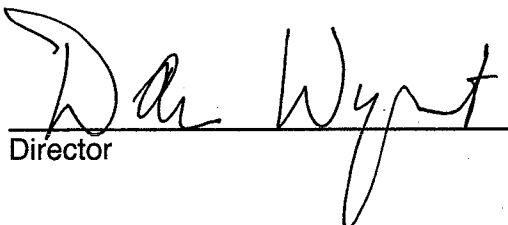
This MOA shall become effective upon approval by the regional administrator of the USEPA.

United States Environmental Protection Agency:

  
\_\_\_\_\_  
Regional Administrator, Region 5

10-17-11  
Date

Michigan Department of Environmental Quality:

  
\_\_\_\_\_  
Director

11-9-11  
Date